In the High Court of Judicature at Madras

Dated: 20.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Petition Nos.45078, 45083, 45088,
45089, 45090, 45100 and 45111 of 2006
and M.P.No.1 of 2006 in all Writ Petitions

Mohan Kalyana Raman ..Petitioner in W.P.45078/2006

Sharmila Bala Sathya Sai ..Petitioner in W.P.45083/2006

Sharada Ramachandran ..Petitioner in W.P.45088/2006

C.Sivakumar ..Petitioner in W.P.45089/2006

P.K.Jayalakshmi ..Petitioner in W.P.45090/2006

T.Rangaiah Naidu ..Petitioner in W.P.45100/2006

Y.Janardhana Reddy ..Petitioner in W.P.45111/2006

..vs..

1. The Member Secretary,
   Chennai Metropolitan
   Development Authority,
   No.8, Gandhi Irwin Road,
   Egmore, Chennai-8.

2. The Commissioner,
   Corporation of Chennai,
   Rippon Buildings,
   Chennai-600 003.

3. Narayana Viswanath

4. M/s.Golden Homes (P) Ltd.,
   AC-63, 5th Avenue,
   Anna Nagar,
   Chennai-600 040. ..Respondents in all petitions

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Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarifed Mandamus, calling for the records in respect of the Letter No.EN1/22447/2006 dated 13.11.2006 for the property bearing New No.15, Old No.AD-35 (Plot No.2317), 10th Main Road, Anna Nagar, Chennai-40 and quash the same and direct the first respondent to refer the matter in relation to the deviations of construction of the above said property to the Monitoring Committee for violation of deviations and take appropriate steps.

For Petitioners : Mr.P.Subba Reddy

For Respondents : Mr.J.Ravindran for R1
Mr.A.Mohammed Ghouse for R2
Mr.C.Ramesh for R3
Ms.Jemmy Vasanth for R4

COMMON ORDER

(Common order of the Court was made by P.SATHASIVAM, J.,)

Since identical issue is involved in all the writ petitions, a common order is passed.

2. The petitioners are owners of flats situated in a building namely, New No.15, Old No.AD-35, Plot No.2317, 10th Main Road, Anna Nagar, Chennai-40.

3. It is their case that their promoter M/s.Golden Homes(P)Ltd., 4th respondent in these petitions, built flats on the said plot No.2317. While constructing the flats of the building, the promoter deviated from the sanctioned plan and completed the construction. The deviated portions are not major in nature. The entire building is a residential complex, having ground and three floors. According to them, the ground floor consists of parking and one residential flat. Apart from the ground floor, there are three floors and each floor consists of two flats, in result there are totally seven flats in the entire complex.

4. It is also their case that from and out of their savings, they invested their entire money in purchasing the above flats. It is further stated that though notice was issued to the Builder, no notice was issued to the occupiers at any point of time. Further, the direction of this Court in W.P.No.12063 of 2000 filed by the third respondent herein is only for Door No.AC-63, 5th Avenue and not for Door No.AD-35, 10th Main Road. With these averments and other averments, they filed the present writ petitions.

5. Heard the learned counsel for the petitioners as well respondents including the third respondent, who filed the earlier writ petition, namely, W.P.No.12063 of 2000.

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6. It is relevant to point out that in W.P.No.12063 of 2000, the 3rd respondent herein, namely, Narayana Viswanath prayed for issuance of a Writ of Mandamus, directing the 1st respondent therein, namely, C.M.D.A., to demolish the unauthorised construction put up by the second respondent therein-Golden Homes(P)Ltd., over the property of the third respondent (N.G.Visalakshi) bearing Door No.AC-63, 5th Avenue, Anna Nagar, Chennai-40. Pursuant to the demolition notice issued by C.M.D.A., in their letter dated 30.05.2000, on 22.09.2006, the earlier Division Bench, after hearing the arguments of the counsel appearing for the writ petitioner as well as first respondent, allowed the writ petition and directed the C.M.D.A., to give effect to the demolition notice dated 30.05.2000 and execute the work within a period of six weeks from the date of the said order. It is the grievance of the present petitioners as well as 4th respondent, namely, Golden Homes Private Limited that though the Builder, namely, Golden Homes (P)Ltd., were shown as 2nd respondent in W.P.No.12063 of 2000, without hearing them, an order has been passed on 22.09.2006 for implementing the demolition notice dated 30.05.2000.

7. Mr.P.Subba Reddy, learned counsel appearing for the petitioners as well as Ms.Jemmy Vasanth, learned counsel appearing for the 4th respondent herein-Golden Homes(P)Ltd., contended that had the earlier Bench heard the Builder-Golden Homes(P)Ltd., it would be possible for them to bring it to the notice of the Court that the violations, even if any, are minimal and no demolition is required in the building in question.

8. The perusal of the earlier order dated 22.09.2006 clearly shows that the 2nd respondent therein-Golden Homes (P)Ltd., were not heard nor were represented by anyone. Apart from these, the present petitioners, who purchased flats, were not shown as parties. In such circumstances, as rightly pointed out by the learned counsel for the petitioners, they had no opportunity to putforth their defence. In addition to the above infirmity, as stated earlier, the third respondent herein has filed the earlier writ petition, with a direction to the C.M.D.A., to take action in respect of the property bearing Door No.AC-63, 5th Avenue, Anna Nagar, Chennai-40, whereas the impugned notice for demolition has been issued in respect of building at Door No.AD-35, New No.15, 10th Main Road, Anna Nagar, Chennai-40, where the present petitioners are residing there. This was also not taken note of by the executing authority, namely, C.M.D.A.

9. In view of the above infirmities and in the light of the claim of the writ petitioners as well as the 4th respondent-Builder of the building in question, we intend to afford an opportunity to them to putforth their case. On these grounds, the impugned proceedings in these writ petitions dated 13.11.2006 in respect of building bearing New No.15, old No.AD-35, Plot No.2317, 10th Main Road, Anna Nagar, are quashed. However, respondents 1 and 2 are permitted to inspect the said property and if

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there is any violation, issue notice to the Builder as well as the writ petitioners, who are the present owners of various flats, and pass fresh orders, after affording opportunity to all the parties concerned.

Writ petitions are allowed on the above terms. No costs. Consequently, miscellaneous petitions are closed.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Member Secretary,
   Chennai Metropolitan
   Development Authority,
   No.8, Gandhi Irwin Road,
   Egmore, Chennai-8.

2. The Commissioner,
   Corporation of Chennai,
   Rippon Buildings,
   Chennai-600 003.

+ One cc to Mr. C. ramesh Advocate SR 64773
+ One cc to Mr. A. Mohammed Ghouse Advocate SR 64223
+ One cc to Mr. K. C. ramamurthy Advocate SR 63946
+ One cc to Mr. P. Subba Reddy, Advocate SR .63967,63968, 63969,63970, 63971, 63972,63973.

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Common Order in W.P.Nos. 45078,45083,45088,45089 45090,45100 & 45111/2006

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